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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,634	02/26/2007	Toshiya Okahisa	1091-0002WOUS	3850
49698 7590 06/11/2010 MICHAUD-Kinney Group LLP 306 INDUSTRIAL PARK ROAD SUITE 206 MIDDLETOWN, CT 06457				
EXAMINER				
DESAL KAUSHIKKUMAR A				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
06/11/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/581,634

**Applicant(s)**

OKAHISA, TOSHIYA

**Examiner**

KAUSHIKKUMAR DESAI

**Art Unit**

3728

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 2/2/10
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. The Amendments and Applicant Arguments submitted on 03/05/2010 have been received and its contents have been carefully considered.

Claims 2-10 and 13-14 are cancelled.

Claims 1 and 12 are amended.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US PG PUB 2002/0029985 to Stunnell.

As to claim 1, Stunnell discloses a multi-chamber container [1, fig 1] that accommodates a plurality of agents [23, 24], comprising: a plurality of filling chambers [10 and 11] to fill agents; a communication portion [15 at 17] that is provided in at least one of the filling chambers to cause the filling chambers to be communicated with one another; and an opening preventing portion [16, fig 1] that closes the communication portion in a carrying mode of the multi-chamber container, wherein the filling chambers are opened [fig 12] in there between via the communication portion by user's operation in the carrying mode of the multi-chamber container to a use mode of the multi-chamber container, the carrying mode of the multi-chamber container is a mode folded in two [fig 1], and wherein the opening preventing portion is a seal [15, para 0056, fig 1] which bonds between the filling chambers [10 and 11] in the carrying mode of the multi-

chamber container, and peels off by expanding [when one chamber of the container is squeezed it will expand the sealed area between the two chambers of the closed container, para 0066] the folded multi-chamber container to open the filling chambers in therebetween via the communication port [at 17] in a use mode of the multi-chamber container.

It is noted that the claims are directed to apparatus which must be distinguished from the prior art in term of structure rather than function. Hence, the functional limitations "to open the filling chambers in therebetween via the communication port in a use mode of the multi-chamber container" which are narrative in form have been given little patentable weight. In order to be given patentable weight, a functional recitation must be supported by the recitation in the claim of a sufficient structure to warrant the presence of the functional language. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). MPEP 2114. Furthermore, Product-by-Process recitations that, "peels off by expanding" have been given little patentable weight. In accordance to MPEP 2113, the method of forming or opening the device is not germane to the issue of patentability of the device itself. Please note that even though product-by-Process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e. multi-chamber container with seal in therebetween, does not depend on its method of opening, i.e. peels off by expanding. *In re Thorpe*, 227 USPQ 964, 966 (*Federal Circuit* 1985). MPEP 2113.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Stunnell as applied to claim 10 above, and further in view of US PG PUB 2004/0188281 to Iwasa et al..

As to claim 11, Stunnell discloses the claimed invention except a caution member to check opening between the filling chambers. Iwasa teaches a caution member [352, fig 12]. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Stunnell's multi-chamber container with caution member as taught by Iwasa to caution about / provide important information to the customer. "A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int 'l v. Teleflex Inc.*, 127 S.Ct. 1731, 82 USPQ2d at 1396.

As to claim 12, Stunnell modified in view of Iwasa discloses the caution member is attached to near the communication portion [3, fig 12], so that the caution member drops by expanding [when one chamber of the container is squeezed it will expand the sealed area between the two chambers of the closed container, para 0066] the folded multi-chamber container in the use mode of the multi-chamber container. It is

noted that the claims are directed to apparatus which must be distinguished from the prior art in term of structure rather than function. Hence, the functional limitations “so that the caution member drops by expanding the folded multi-chamber container in the use mode of the multi-chamber container” which are narrative in form have been given little patentable weight. In order to be given patentable weight, a functional recitation must be supported by the recitation in the claim of a sufficient structure to warrant the presence of the functional language. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). MPEP 2114. Furthermore, Product-by-Process recitations that, “drops by expanding” have been given little patentable weight. In accordance to MPEP 2113, the method of forming or opening the device is not germane to the issue of patentability of the device itself. Please note that even though product-by-Process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e. multi-chamber container with seal in therebetween, does not depend on its method of using, i.e. drops by expanding. *In re Thorpe*, 227 USPQ 964, 966 (*Federal Circuit* 1985). MPEP 2113.

### ***Response to Arguments***

Applicant's arguments filed 03/05/2010 have been fully considered but they are not persuasive because in accordance to MPEP 2113, the method of opening the device is not germane to the issue of patentability of the device itself. It is noted that even though product-by-process claims are limited by and defined by the process,

determination of patentability is based on the product itself. *In re Thorpe*, 227 USPQ 964, 966 (Federal Circuit 1985). MPEP 2113. The arguments have been addressed in the body of the rejections, at the appropriate locations.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

5. **Prior Art not relied upon:** See attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAUSHIKKUMAR DESAI whose telephone number is (571)270-7290. The examiner can normally be reached on Monday- Friday 7:00 AM - 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. D./  
Examiner, Art Unit 3728  
Thursday, June 10, 2010.

/Ehud Gartenberg/  
Supervisory Patent Examiner, Art Unit 3728